**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 124 OF 2005**

Himmatrao @ Hanumantrao Shamrao Patil... Appellant
(Ori.Def.No.2)

V/s

Santajirao Shamrao Patil & ors. ... Respondents

Mr. Milind Deshmukh for the appellant.

Mr. Umesh Mankapure holding for Mr.R.V. More for the respondents.

**CORAM: P.V. KAKADE, J.**

**DATED: 6TH JULY, 2005**

**P.C.:**

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Islampur, dated 15.9.2004 allowing the appeal and setting aside the judgment and order passed by the Civil Judge, Sr.Divn., Sangli, dismissing the suit for partition.

2. I have heard the learned counsel for both parties. Perused the record.

3. The plaintiff filed the suit for partition of the

suit property on the ground that those were ancestral properties and, therefore, partitions were required to be effected by metes and bounds. However, plaintiff did not prove that house property which was in the name of plaintiff No.4 was self-acquired property. It was also held that defendant No.2 did not prove that certain lands were necessary properties for the purpose of bringing those in hotch-potch for divisions and as such the suit came to be dismissed.

The appeal was carried to the Court of Addl. District Judge, Islampur, who, after hearing both parties on merits and on the basis of available evidence, came to the conclusion that the house property was not self-acquired property of the concerned party and, therefore, was required to be brought in potch-potch which was not done. It was also held that all the necessary parties are not joined to the suit. In view of this position, when the parties were held to be entitled for partition, the matter was remanded to the lower Court with direction to the appellant that they shall submit an application to amend the plaint and to incorporate the house property constructed on Plot No. 291 upon RS No.200/2A of Peth-Vadgaon within certain period after paying necessary Court fee stamp. On

compliance thereof the Trial Court was directed to draw preliminary decree entitling the appellants and respondents to the relief of partition and separate possession in agricultural fields in accordance with Sec. 54 of the Civil Procedure Code. Earlier it was also held that appellants 1 to 4 in the said appeal were having 16.8750 share each and respondents 1 and 2 were having 14.06 share each and appellant No.6 had 4.38 share in the suit properties including the house property.

4. On perusal of the reasonings adopted and findings recorded by the learned appellate Court Judge, I am satisfied that he has properly appreciated the entire evidence on record and instead of disposing of the appeal, he has determined the shares on the basis of evidence on merits and in order to remove the lacuna regarding inclusion of house property, had remanded the matter for limited purpose for inclusion of the said property and further drawing of preliminary decree.

5. The learned counsel for the appellant sought to submit that the order passed by the lower appellate Court Judge was illegal and matter could not be adjudicated on merits as well as remanded at the same

time. However, as noted earlier, the lower appellate Court has rightly remanded the matter for limited purpose for removing the lacuna in respect of the house property which was also held to be joint family property.

In the result, I am satisfied that there is no substantial question of law involved in this appeal and, as such, the appeal stands dismissed with no order as to costs.

Consequently, the Civil Application No. 236 of 2005 also stands dismissed with no order as to costs.

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